IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Ashley Reeves, as Personal Representative of the Estate of Carl Albert Reeves, Plaintiff,	Case No.: 2:12-cv-02765-DCN
vs.	**RESPONSE OF COUNSEL FOR THE DEFENDANTS, TOWN OF COTTAGEVILLE AND RANDALL PRICE, TO PLAINTIFF'S MOTION SEEKING SANCTIONS**
Town of Cottageville, the Town of Cottageville Police Department, and Randall Price, individually, Defendants.	

COME NOW Vinton D. Lide, counsel for the Defendant, Town of Cottageville, and Lake E. Summers, counsel for Defendant, Price, in response to Plaintiff's Motion seeking sanctions, as a result of Defendants having filed and argued their Motion seeking the disqualification of Plaintiff's counsel.

The Motion to Disqualify Plaintiff's counsel from further participation in this action, due to his having formerly served as Town Attorney of the Defendant Town, was based on the actions of the Plaintiff's counsel. These actions were not refuted, since by the overwhelming evidence presented to the Court, Plaintiff's Counsel was the town attorney during a period of time that these Defendants believe were, and are, still relevant to the present action. In fact, his representation during 2006 coincides with a prior incident on which Plaintiff's Counsel now asserts was the predicate basis for negligence as to the town. His belief that there was an inaction on the part of the town was directly drawn from the knowledge he acquired from his prior representation.

The Defendants believe that this is still a valid and good faith basis for the assertions made in their prior Motion to Disqualify Counsel. Despite this Court's ruling to the contrary, it is still believed that such allegations were sufficiently serious to warrant a further investigation into the facts, prior to bringing it to the Court's attention via motion. Currently, whether there is agreement on the timing or even the merits of the Motion itself, the basis for the Motion were sufficient to warrant a good faith basis on the part of the Defendants to raise the issue with this Court.

It is indisputable that the Motion was denied by this Honorable Court, and that all Defense Counsel are further aware that the Court has the power to impose any sanctions it may find appropriate; however, it is strongly believed that any such sanction would be unwarranted for the following reasons:

First, Counsel takes issue with Plaintiff's assertion that said Motion was filed "frivolously", for "improper purposes", causing unnecessary delay" or "harassing" Plaintiff. Counsel states, as they did at the hearing on the Motion to Disqualify, that upon learning that Plaintiff's counsel had served as Town Attorney, they attempted to learn what records and documents existed in the possession of the Town which would reflect the relevant time period of the service of Plaintiff's counsel. Those records that were found have been presented to the Court and reflect that Plaintiff was Attorney for the Town of Cottageville during the years 2005, 2006 and 2007. Prior to the location and review of these Records, all Counsel for Defendant could not be sure if this service was sufficiently connected or not to the present litigation. As this Court knows, if not related, then to make such an allegation prematurely, would or should raise more delicate issues for no purpose. As a result, it was honestly believed that it was absolutely essential that a more thorough and exhaustive examination be completed prior to raising the issue to the Court.

Secondly, at the time of the hearing of the Motion to Disqualify, counsel represented that they were not yet in compliance with Rule 8.3, RPC, Rule 407, SCACR; however, at present such filing has been made, and all essential documents were provided to the appropriate officials.[1] In short, the Motion to Disqualify, as well as the compliance with the reporting obligations, were all undertaken due to counsels' sincere belief that Plaintiff's counsel has, indeed, engaged in actions and/or conduct that violates the standards of our profession. This belief rests on our applying the facts known to us, and on the consultation with a member of the South Carolina Bar, licensed to practice before this Honorable Court, who was formerly the Prosecuting Attorney, and currently serving as an Attorney to Assist Disciplinary Counsel. Regardless of whether this Court agrees with the assessments of Defendants' Counsel, such assessments were undertaken in the ongoing good faith belief that such conduct by Plaintiff's Counsel warrants serious and significant consideration, by both this Court as well as others.

Currently, Defendants' Counsel clearly understand that the Court has denied our Motion, and it represented that we are prepared to go forward with the trial of this action. We again state; however, that we did not file the Motion for any ulterior or improper purpose. Instead, such filing was based on our reading of the Rules of Professional Conduct, the pleadings, relevant testimony at deposition, and town records. While reasonable minds might differ, there can be no question that conduct by any attorney that raises questions regarding ethical behavior, must be treated with due diligence and respect. You simply do not raise such allegations without examining, or attempting to determine, all of the facts that might be available. While this Court

[1] On the substantive question, the Supreme Court of South Carolina would ultimately be the final arbiter of whether the provided documents actually warrant attention and a decision pursuant to Rule 407, SCACR, and Rule 413, SCACR. To this end, and in a continued good faith belief that such information warrants attention, effective August 21, 2014, these relevant documents were hand delivered to the appropriate agency, in accordance with those obligations arising pursuant to Rule 8.3, RPC.

might disagree with the timing, it is affirmatively asserted, that the period of time in question was necessary to verify what was known, and to discover that which was not known for the relevant period.

Another issue that should be mentioned is that while jury selection did take place, this was done before a different judge, in part because of the unavailability of this Court. While timing could play a factor in the Court's mind, we would note that contacting this Honorable Court, especially *ex parte*, on the initial information, we still believe would have been highly imprudent. This was a judgment call, and while the Court might question that judgment, we believe there should be no basis to question the motives for wanting to examine all the facts that might or could be relevant and available.[2]

In conclusion, it is firmly asserted by all Defense Counsel, that the Motion to Disqualify Plaintiff's Counsel was made after a great deal of thought, discussion, research, and due diligence on the part of all involved. It was also made in the good faith, and still with the very real belief that Plaintiff's Counsel has violated the appropriate rules for the professional behavior of all attorneys in the State of South Carolina. As a consequence, and in reliance of all that is asserted here, as well as in our original Motion to Disqualify, we would humbly ask that the Court Deny the Plaintiff's Motion for Sanctions.

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[2] Should this Court determine that Sanctions would be appropriate, then Defendants would like to respectfully call attention to the fact that Judge Gergel's jury venire was utilized, to select several other juries in other actions, at the same time a jury in this case was selected. Thus, if any award of Sanctions is to be made, then we would humbly ask that we bear only a proportionate share of the cost of empaneling that venire.

RESPECTFULLY SUBMITTED,

s/Lake E. Summers

Lake E. Summers
FID #: 7687
Malone, Thompson, Summers & Ott LLC

339 Heyward Street, Suite 200
Columbia, SC 29201
(803) 254-3300 – Office
(803) 254-0309 – Fax
summers@mtsolawfirm.com

Attorneys for Defendant Randall Price

s/Vinton D. Lide

Vinton D. Lide
FID #: 2683
LIDE AND PAULEY, LLC

5179 Sunset Boulevard
Post Office Box 2189
Lexington, SC 29072
(803) 808-1799 – Office
(803) 808-1887 – Fax
dee@lidelaw.com

Attorneys for the Town of Cottageville and the Cottageville Police Department

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